

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to beverage container deposits and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 107, “Beverage Container Deposits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455C.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 455C as amended by 2022 Iowa Acts, Senate File 2378.

Purpose and Summary

Chapter 107 regulates the beverage container redemption system in Iowa. This rule making is necessary to align Chapter 107 with Iowa Code chapter 455C as amended by recent legislation (2022 Iowa Acts, Senate File 2378). The proposed amendments rescind or amend provisions that are now inconsistent with the amended statute. The proposed amendments also clarify the existing rules and remove outdated provisions.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 22, 2022. Comments should be directed to:

Amie Davidson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: bottlebill@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Amie Davidson via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Ms. Davidson prior to the hearing to facilitate an orderly hearing.

November 22, 2022
1 to 2 p.m.

Video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve rule **567—107.1(455C)**.

ITEM 2. Amend rule 567—107.2(455C), introductory paragraph, as follows:

567—107.2(455C) Definitions. ~~As used in this chapter:~~ For the purpose of this chapter, the following terms shall have the meaning indicated in this rule. The definitions set out in Iowa Code section 455C.1 shall be considered to be incorporated verbatim in this rule.

ITEM 3. Rescind the definitions of “Beverage,” “Beverage container,” “Commission,” “Consumer,” “Dealer,” “Dealer agent,” “Department,” “Director,” “Distributor,” “Exempt dealer,” “Manufacturer,” “Redemption center,” “Redemption center for a dealer” and “Registered redemption center” in rule **567—107.2(455C)**.

ITEM 4. Adopt the following new definitions of “Distributor redemption center” and “Handling fee” in rule **567—107.2(455C)**:

“*Distributor redemption center*” means a redemption center that satisfies the requirements of Iowa Code section 455C.14.

“*Handling fee*” or “*fee*” means the amount reimbursed by a distributor, in addition to the return of the 5 cent refund value, in an amount that is 1 cent per beverage container for containers accepted from a dealer agent and 3 cents per beverage container accepted from a participating dealer or redemption center.

ITEM 5. Amend rule **567—107.2(455C)**, definitions of “Exempt beverage container” and “Unapproved redemption center,” as follows:

“*Exempt beverage container*” means a beverage container that is not marked with the words “Iowa Refund 5¢” because it is a refillable glass beverage container having a brand name permanently marked on it and having a refund value of 5 or more cents or because it is a refillable metal or plastic beverage container that has been exempted, in accordance with the procedure of subrule 107.3(7), from the requirement of having the refund value marked on the container. An exempt beverage container is exempt from having the words “Iowa Refund 5¢” indicated on the container, but is not necessarily exempt from the minimum deposit and redemption requirements of this chapter.

“Unapproved redemption center” means a redemption center that is not an approved redemption center ~~or a registered redemption center.~~

ITEM 6. Amend subrule 107.3(1) as follows:

107.3(1) All beer, wine, alcoholic liquor, mineral water, soda water and similar carbonated soft drink containers (other than exempt containers) sold or offered for sale in Iowa by a dealer shall have the words “Iowa Refund 5¢” or “IA 5¢” clearly, indelibly and legibly indicated on the container. ~~If the refund value is more than 5 cents, the greater value may be indicated, e.g., “Iowa Refund 10¢” or “IA 10¢.”~~ Any abbreviation of the words “Iowa Refund” other than as provided in this subrule shall be submitted to and approved by the department.

ITEM 7. Amend subrule 107.3(5) as follows:

107.3(5) The words “Iowa Refund 5¢” or “IA 5¢” shall be on the top or on the cylindrical portion of a metal beverage container. The words “Iowa Refund 5¢” or “IA 5¢” shall be on the conical portion of a glass or plastic beverage container so that the words are visible from above or shall be on the product label. The placement of refund information solely on the bottom of the beverage container is prohibited.

ITEM 8. Amend subrule 107.3(7), introductory paragraph, as follows:

107.3(7) An application for exemption from the requirement of having the words “Iowa Refund 5¢” or “IA 5¢” indicated on the container shall be ~~on Form LQ 37 or on 8½" × 11" paper~~ submitted to the department and shall contain:

ITEM 9. Amend subrule 107.3(8) as follows:

107.3(8) An example of the container for which the exemption is being requested shall be sent to the department along with the application required in subrule 107.3(7). The example may consist of photographic images or empty containers. Examples submitted to the department shall not contain any liquid.

ITEM 10. Adopt the following new subrule 107.3(10):

107.3(10) Automatic exemption. Beverage containers sold in Iowa containing alcoholic liquor as defined in Iowa Code section 123.3(5) where the total capacity of the container is not more than 50 milliliters are automatically exempted from the labeling requirement of rule 567—107.3(455C). However, such beverage containers remain subject to the remainder of this chapter.

ITEM 11. Amend rule 567—107.4(455C), introductory paragraph, as follows:

567—107.4(455C) Redemption centers. The Act provides for both approved and unapproved redemption centers. Both approved and unapproved redemption centers redeem empty beverage containers and pay the refund value to consumers. ~~Additionally, the Act recognizes “a redemption center for a dealer.” Unapproved redemption centers in existence on May 22, 2002, and served by distributors on a voluntary basis may formalize the status quo by registering with the department pursuant to 107.4(4). Only approved redemption centers can satisfy the requirements of Iowa Code sections 455C.4(2) “a”(2) and 455C.4(2) “a”(3) and 2022 Iowa Acts, Senate File 2378, section 19.1(a) or 19.1(b). Additionally, only approved redemption centers will be listed on the department’s electronic database pursuant to Iowa Code section 455C.4(2) “c.”~~

ITEM 12. Amend subrules 107.4(1) and 107.4(2) as follows:

107.4(1) Approved redemption centers.

a. Any person may file with the department an application for approval of a redemption center.

b. An annual application for approval of a redemption center shall be submitted ~~on Form LQ38 or on 8½" × 11" paper and shall contain the following information:~~ to the department electronically.

(1) Initial application. All redemption centers in existence prior to January 1, 2023, that wish to be considered approved under this chapter must apply for approval pursuant to the requirements of subrule 107.4(1) by January 31, 2023. This will ensure that the approved redemption center list published by the department is accurate and includes existing redemption centers. All other redemption centers that wish to be considered approved under this chapter (i.e., new redemption centers established any time after January 1, 2023) should file their application within 30 days of starting their business.

(2) Annual renewals. All redemption centers should file their annual renewal application by January 31 of each subsequent year to allow the department to update its approved redemption center list in a timely manner.

(3) Application requirements. A redemption center must submit a separate application for each facility, including if a redemption center is operating a mobile redemption system for a dealer or dealers. The information on the application will be included in an electronic database for consumers to locate the nearest approved redemption center; as such, applications must be resubmitted annually to ensure that contact information remains accurate. There is no fee to submit the application. The application shall include the following information:

(1) 1. Name, address and telephone number of the redemption center;

(2) 2. Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;

(3) 3. ~~Indication that the redemption center will accept all kinds, sizes, and brand names of beverage containers sold by the dealers served by the redemption center; A statement that the operator of the redemption center understands it must accept all redeemable containers, except for those containers exempted in rule 567—107.13(455C);~~

4. Whether the redemption center will be operating a mobile redemption system and the location where the system will be operated.

~~(4) Names and addresses of the dealers to be served by the redemption center and the written consent of those dealers to be served by the redemption center;~~

~~(5) Distance, in blocks or other appropriate measure, from the redemption center to each dealer to be served by the redemption center;~~

~~(6) Names and addresses of the distributors whose beverage containers will be redeemed;~~

~~(7) Hours during which the redemption center is to be open;~~

~~(8) Whether metal, glass or plastic beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking;~~

~~(9) Reasons why the redemption center and the dealers to be served by it believe that the redemption center will provide a convenient service to consumers.~~

c. A redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers. The department order that approves the redemption center shall name the dealers to be served by the redemption center. The department will issue an electronic order of approval once a complete application is received.

d. ~~An approved redemption center may file with the department a supplemental application to serve additional dealers. The supplemental application shall be in the form and contain the information required by paragraph "b." If the department finds that the redemption center will provide a convenient service to the customers of those additional dealers which the redemption center proposes to serve, the department shall supplement its order approving the redemption center to name the additional dealers.~~

e. ~~A dealer named in the department order that approves a redemption center or named in a supplemental order shall be an exempt dealer.~~

f. d. The department may at any time rescind the order approving a redemption center ~~or terminate the exemption of a dealer if the department determines, after notice and hearing, that the redemption center is in violation of the Act or this chapter or that the redemption center is no longer meeting the above criteria or is no longer providing a convenient service to a dealer's customers.~~

g. ~~A dealer may withdraw its consent to be served by a redemption center which is approved as a redemption center for the dealer by filing with the department written notice of withdrawal of consent. A dealer which has withdrawn its consent is no longer an exempt dealer, and the approval of its redemption center as a redemption center for the dealer is thereby terminated.~~

h. e. An approved redemption center shall accept from consumers and shall pay the refund value for all beverage containers that bear an Iowa refund value and ~~are of the kinds, sizes and brand names sold by the dealers for which it is an approved redemption center~~ those containers exempted from the labeling requirement pursuant to subrule 107.3(10).

~~i. An approved redemption center shall be in operation and open to the public for redemption of beverage containers at least 20 hours per week, 4 hours of which shall be between the hours of 6 p.m. and 10 p.m. or on Saturday or Sunday, or a combination thereof.~~

~~j.f. When an approved redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation. As of the final date of operation, the redemption center's approval as a redemption center shall be terminated and a dealer it was approved to serve shall no longer be an exempt dealer. An approved redemption center must notify the department and any dealers with which the redemption center has agreements 30 days prior to the redemption center's closing.~~

107.4(2) Unapproved redemption centers. Nothing in the Act or this chapter prevents a person from establishing a redemption center that has not been approved by, ~~certified by, or registered with the department. Before commencing operations, unapproved redemption centers shall provide the following to the department:~~ These facilities are not approved redemption centers as required by some sections of the Act.

~~a. Name, address and telephone number of the redemption center;~~

~~b. Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center; and~~

~~c. Operating hours of the redemption center.~~

~~When the redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation.~~

ITEM 13. Rescind subrule 107.4(3) and adopt the following new subrule in lieu thereof:

107.4(3) Distributor redemption centers.

a. Each beer distributor selling nonrefillable metal beverage containers in this state shall provide individually or collectively by contract or agreement with a dealer, person operating a redemption center or another person, at least one facility in the county seat of each county where refused empty nonrefillable metal beverage containers, refused pursuant to rule 567—107.13(455C), having a readable refund value indication as required by this chapter may be accepted and redeemed. In cities having a population of 25,000 or more, the number of the facilities provided shall be one for each 25,000 population or a fractional part of that population.

b. Distributor redemption centers may be either “approved” or “unapproved.” To be “approved,” the facility must submit an application pursuant to subrule 107.4(1), which includes the requirement to accept more than just metal beverage containers.

ITEM 14. Rescind subrule **107.4(4)**.

ITEM 15. Rescind subrule **107.4(5)**.

ITEM 16. Rescind subrule **107.4(6)**.

ITEM 17. Rescind and reserve rule **567—107.5(455C)**.

ITEM 18. Rescind and reserve rule **567—107.7(455C)**.

ITEM 19. Amend rule 567—107.8(455C) as follows:

567—107.8(455C) Interpretive rules Miscellaneous requirements.

107.8(1) Beverage containers “sold” on interstate carriers.—~~It is common practice for interstate carriers to provide or sell soft drinks, beer, wine, or alcoholic liquor to passengers for consumption on the conveyance. Such containers are not a litter problem and their return would be impractical. Since statutes should be construed to avoid a strained or impractical result, the commission believes that control of the beverage containers “sold” on interstate carriers is beyond the objectives sought to be obtained by the Act and that these containers, such as trains, planes, or buses that travel through Iowa, are not subject to the deposit and labeling requirements of the Act.~~

107.8(2) Beverage containers must be reasonably intact. In order to be redeemed, an empty beverage container must be returned reasonably intact. For a refillable beverage container, the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped,

but it may not have the bottom broken out or the neck broken off. A nonrefillable metal container may be dented or partially crushed, but may not be crushed flat. A returned beverage container should be able to stand on its own base.

107.8(3) Vending machines.

a.—When a beverage container is dispensed from a vending machine in exchange for money, there is presumed to be a sale of a beverage in a beverage container to a consumer. Therefore some person must be the “dealer” who is responsible for collecting the deposit at the time of sale and for refunding the deposit when the empty beverage container is returned. Because of the variety of contractual relationships surrounding operation of a vending machine, the person who is the “dealer” might be the owner of the vending machine, the lessee of the vending machine, the owner of the premises on which the vending machine is located, or the person who stocks the vending machine. It is incumbent upon the parties involved in the operation of a vending machine to determine the person who is the “dealer” and to indicate prominently on the vending machine the name, location and normal operating hours of the dealer (or an approved redemption center) if the dealer does not have personnel on its premises.

b.—If the vending machine is located on premises where personnel of the dealer are not normally working, there is no obligation to provide personnel to redeem beverage containers at the site of the vending machine. However, the “dealer” must provide for redemption of beverage containers at the dealer’s usual working place.

107.8(4) 107.8(2) Transfer tanks, premix tanks and beer kegs. Because transfer tanks, premix tanks and beer kegs (half kegs, quarter kegs or pony kegs) are refillable, are returned to distributors and are not a litter problem, the commission believes that control of these containers is beyond the objectives sought to be obtained by the Act and that these containers are not subject to the deposit and labeling requirements of the Act.

107.8(5) 107.8(3) Return limits. Dealers may limit the number of containers returned by an individual to 120 containers in a 24-hour period. Redemption centers may limit the number of containers returned by an individual to 500 containers in a 24-hour period.

107.8(6) Hours of returns for dealers. A dealer, unless exempted pursuant to 107.4(4), must accept returns, at a minimum, from 7 a.m. to 10 p.m. unless the dealer’s operating hours are shorter, in which case returns shall be limited to the dealer’s hours of operation. If a dealer chooses to limit the hours of returns, the dealer must post a sign stating the hours during which beverage containers are accepted for return.

107.8(7) A dealer shall provide to the department upon request the name, telephone number and address of the distributor of any or all beverages sold by the dealer.

ITEM 20. Amend rule 567—107.9(455C) as follows:

567—107.9(455C) Pickup and acceptance of redeemed containers by distributor.

107.9(1) *Pickup and acceptance from participating dealers.* A distributor shall accept and pick up from a participating dealer served by the distributor, ~~other than an exempt dealer,~~ all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly, or when the distributor delivers the beverage product to the dealer if deliveries are less frequent than weekly, unless otherwise agreed to by both the distributor and the dealer.

107.9(2) *Pickup and acceptance from approved redemption centers and redemption centers certified as a redemption center for a dealer.* A distributor shall accept and pick up from an approved redemption center ~~for a dealer served by the distributor and from a redemption center certified as a redemption center for a dealer served by the distributor~~ all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly, ~~or when the distributor delivers the beverage product to the dealer for which the redemption center is certified as a redemption center if deliveries are less frequent,~~ unless otherwise agreed to by both the distributor and the approved redemption center ~~or the certified redemption center for a dealer, as the case may be.~~

~~107.9(3) Pickup from registered redemption centers.~~ A distributor shall pick up from a registered redemption center at the physical address specified in the redemption center's application, or at a new location approved by the department pursuant to 107.4(4), all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers according to the following schedule:

~~a.~~ At least as frequently as the distributor picks up empty beverage containers from a dealer served by the distributor and located within three road miles of the registered redemption center, but not less frequently than once every ten calendar days;

~~b.~~ At least once every ten calendar days for a registered redemption center located more than three road miles from the closest dealer served by the distributor; or

~~c.~~ As agreed to by both the distributor and the registered redemption center.

~~107.9(4) Acceptance of redeemed containers from redemption centers.~~ A distributor shall accept delivery of empty beverage containers from and pay the refund value and handling fee to a redemption center located within the distributor's geographic service area provided that the containers bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor.

~~107.9(5) 107.9(3) Acceptance of redeemed containers from dealer agents.~~ A distributor shall accept delivery of empty beverage containers from and pay the refund value and handling fee to a dealer agent provided that the containers were picked up by the dealer agent within the distributor's geographic service area and that they bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor.

~~107.9(6) 107.9(4) Notification of frequency.~~ A distributor shall notify each participating dealer served by the distributor of the intended frequency of pickup. A distributor shall notify each redemption center from which the distributor is required to pick up containers of the intended frequency of pickup.

~~107.9(7) 107.9(5) Partial pickup.~~ A distributor which picks up containers more often than the required frequency shall not be required to pick up all available containers from a participating dealer or redemption center at each pickup provided that all available containers are picked up from the dealer or redemption center within the required frequency.

ITEM 21. Rescind and reserve rule **567—107.11(455C)**.

ITEM 22. Rescind and reserve rule **567—107.12(455C)**.

ITEM 23. Rescind rule 567—107.13(455C) and adopt the following new rule in lieu thereof:

567—107.13(455C) Refusing payment of the refund value. A distributor, participating dealer, or redemption center may refuse to pay the refund value and, if applicable, the handling fee in the following situations:

107.13(1) Nonparticipating dealers. A dealer may refuse to accept any beverage container and pay the refund value on a container if the dealer is in compliance with one of the requirements of Iowa Code section 455C.4 that allows the dealer not to participate in the bottle redemption program established in Iowa Code chapter 455C, and the dealer has complied with those provisions requiring proper notification to consumers of the approved redemption centers where the containers may be redeemed.

107.13(2) Refusal of certain store brands.

a. A redemption center may refuse to accept store brand containers for redemption if the store selling those brands refuses to identify distributors to pick up redeemed containers and to pay the full deposit and handling fee. In such cases, the redemption center shall post a notice of the store brands it will not accept and why it will not accept those brands.

b. Any dealer, regardless of whether the dealer is a participating dealer or a nonparticipating dealer, that collects a deposit for a store brand must provide the consumer with a way to redeem the container to recover the deposit. Failure to do so is a violation of Iowa Code chapter 455C.

107.13(3) Redeemed containers must be reasonably clean and intact. Consumers shall return containers in a reasonably clean and intact condition. For a refillable beverage container, the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped, but it may not have the bottom broken out or the neck broken off. A nonrefillable metal

container may be dented or partially crushed, but may not be crushed flat. In order to be redeemed, an empty beverage container shall be dry and free of foreign materials other than the dried residue of the beverage. Redemption centers and participating dealers may refuse to redeem containers that are not reasonably clean and intact, as well as containers that do not have an Iowa 5-cent redemption label and containers that have had the Iowa 5-cent label removed or if the label is illegible for any reason.

ITEM 24. Amend rule 567—107.14(455C) as follows:

567—107.14(455C) Payment of refund value by distributors.

107.14(1) *Payment to participating dealers.* A distributor shall issue to a participating dealer payment of the refund value and handling fee within one week following pickup or when the dealer pays the distributor for the beverages, if payment is less frequent than weekly.

107.14(2) *Payment to approved redemption centers ~~and redemption centers certified as a redemption center for a dealer~~.* A distributor shall issue to an approved redemption center ~~and to a redemption center for a dealer~~ payment of the refund value and handling fee within one week following pickup unless otherwise agreed to by both the distributor and the redemption center.

107.14(3) *~~Payment to registered redemption centers.~~* ~~A distributor shall issue to a registered redemption center payment of the refund value and handling fee within one week following pickup or when the dealer which is served by the distributor and which is closest to the registered redemption center pays the distributor for the beverages supplied by the distributor, if payment is less frequent than weekly. Payment to a registered redemption center shall be issued by a distributor at least every 14 calendar days unless otherwise agreed to by both the distributor and the registered redemption center.~~

107.14(4) **107.14(3)** *Payment to redemption centers and dealer agents delivering containers to distributors.* A distributor shall issue to a redemption center or dealer agent payment of the refund value and handling fee within one week of delivery and acceptance of empty beverage containers, unless otherwise agreed to by both the redemption center and the distributor or by both the dealer agent and the distributor, as the case may be.